IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.537 of 2006
Date of Decision : December 07, 2006.

Jaswant Singh ..... Petitioner

Vs.

Gram Panchayat and others ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.B.R.Mahajan, Advocate
for the petitioner.

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P.S.Patwalia, J. (Oral) :

The present revision petition has been filed against orders dated 22.4.2005 and 30.9.2005 passed by the trial court and the lower appellate court vide which an application under Order 39 Rules 1 and 2 filed by the petitioner, plaintiff in the suit, was dismissed.

The plaintiff had filed a suit claiming that he and his father Charan Singh are jumla mushtarka malkan of the suit land and are cultivating the same as owners. It was their contention that the Gram Panchayat had no right, title or interest in the suit land. It was further alleged that the Gram Panchayat had no authority to give the suit land in auction to any other person or to take forcible possession of the land from the plaintiff. Along with the suit, an application had been filed for temporary injunction with a prayer that the petitioner's possession should be protected during the pendency of the suit.

Both the courts have found that in fact the petitioner's father had been shown in possession of the suit property in the jamabandi for the year 1993-94 and 1994-95 as Gair Marusi. The land had been leased out to the petitioner's father for cultivation. The courts have further found that the

suit land had been kept for the common purpose of the village being refai-aam, panchayat ghar and hospital etc. The Gram Panchayat had been leasing out the land to different persons for specific periods for the purpose of deriving income for the common purpose till they have requisite funds for construction of a proper hospital. It is on this basis that injunction has been declined. The relevant observations of the lower appellate court are as hereunder :-

> *"9. In the present case the plea of the plaintiff is that earlier father of the plaintiff namely Charan Singh was owner in possession of the suit property being one of the proprietors of the village but this plea of the plaintiff is not correct because his father has been shown to be in possession of the suit property as per jamabandi for the year 1993-94 and the khasra girdawri of the year 1994-95, as Gair Marusi. So the plaintiff who has stepped into the shoes of his father since deceased cannot claim himself to be owner in possession of the suit property because his father Charan Singh remained in possession of the suit property as Gair-Marusi tenant and not in the capacity of owner.*
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> *10. The plea of the plaintiff is that the suit land is Jumla Mustarka Malkana Bachat land but position is otherwise because the suit land is Jumla Mustarka Malkana land was reserved for the common purposes at the time of consolidation of holdings and it is clear from the copy of the jamabandi for the year 1960-61 that the suit land was reserved for the common purposes of the village i.e. refai-amm, Panchayat Ghar and hospital etc. So the suit land is not un-utilised*

land out of jumla mustarka malkana land which cannot be considered as Bachat land because Bachat land is that land which remains un-utilised after utilising the land reserved for common purposes of the village and that un-utilised bachat land out of Jumla Mustarka Malkana land can be redistributed among the proprietors of the village as per the share of each proprietor according to the share of the land which was taken from the proprietors at the time of reserving the land for the common purposes of the village. When the suit land was kept for the common purposes of the village i.e. Rafai-aam, Panchayat Ghar, hospital then even the Gram Panchayat had no authority to change the user of the land but the Gram Panchayat had been managing and controlling the suit land by giving the same to different persons on lease for the purpose of deriving income from that land for using the said income for the common purposes of the village for the welfare of the villagers till the requisite funds are received by the Gram Panchayat for construction of proper hospital, Panchayat Ghar etc. upon the suit land."

In this view of the matter I do not find any error in the view taken by the courts below so as to warrant any interference by way of the present revision petition. The same is accordingly dismissed.

December 07, 2006 (P.S.Patwalia)
monika Judge